



State of Montana
Department of Natural Resources and Conservation

Drug and Alcohol Testing

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Approval Signature: /s/ Bud Clinch, Director		Last Revised: 10/3/95

1.0 Policy

Our employees are our most valuable resource, and it is our goal to prevent accidents and injuries resulting from the misuse of alcohol and prohibited substances, as well as to provide a healthy and safe working environment.

In meeting these goals, it is our policy to:

- (1) assure employees are not impaired in their ability to perform assigned duties in a safe, productive and healthy manner;
- (2) prohibit the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances;
- (3) create a workplace environment free from the adverse effects of drug and alcohol abuse or misuse;
- (4) recognize drug and alcohol abuse as a treatable illness and encourage employees to seek professional assistance any time alcohol or drug dependency adversely affects their ability to perform their duties;
- (5) maintain a work environment and promote work habits that foster public confidence; and
- (6) strive to continually improve the service we provide the public and recognize the key role our agency plays in public safety.

2.0 Purpose

The purpose of this policy is to assure worker fitness for duty and to protect our employees and the public from the risks posed by the use of alcohol and prohibited substances. This policy is also intended to comply with all applicable Federal regulations governing workplace anti-drug programs. The Federal Highway Administration (FHWA) of the U.S. Department of Transportation has enacted 49 CFR Part 382, 391, 392 and 395, as amended, that mandate urine drug testing and breath alcohol testing for persons who are subject to Commercial Drivers License (CDL) requirements and perform safety sensitive functions.

The U.S. Department of Transportation (DOT) has also enacted 49 CFR Part 40, as amended, that sets standards for the collection and testing of urine and breath specimens.

In addition, the Department has enacted 49 CFR Part 29, "The Drug-Free Workplace Act of 1988," which requires the establishment of drug-free workplace policies and the reporting of certain drug-related offenses to the FHWA.

This policy is also intended to comply with 39-2-304, MCA.

This policy incorporates the requirements under the above regulations.

Nothing in this policy is intended to preclude disciplinary action being taken under existing department policy.

A list of definitions is included for easy reference (**ATTACHMENT 1**).

3.0 Applicability

Effective January 1, 1995, this policy applies to all employees who are subject to CDL requirements and perform safety sensitive functions (hereafter referred to as covered positions). It applies to on-duty time as well as off-site breaks and lunch periods when an employee is scheduled to return to work.

A list of classes that may require a CDL is attached (**ATTACHMENT 2**).

4.0 Prohibited Substances

"Prohibited substances" addressed by this policy include the following:

4.1 Illegally Used Controlled Substances or Drugs

Illegal use of controlled substances or drugs which include marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine is prohibited. Illegal use also includes the misuse of legally prescribed drugs and use of illegally obtained prescription drugs.

4.2 Legal Drugs

The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills or judgment may be adversely affected must be reported to the supervisor, and medical advice should be sought, as appropriate, before performing safety-sensitive functions.

A legally prescribed drug means that the employee has a prescription or other written approval from a physician for the use of a drug in the course of medical treatment, and the physician advises the employee that the substance does not affect the driver's ability to safely operate a commercial motor vehicle (CMV). It must include the patient's name, the name of the substance, quantity/amount to be taken and the period of authorization. The misuse or abuse of legal drugs while performing safety-sensitive functions is prohibited.

4.3 Alcohol

The use of beverages or substances, including medication, containing alcohol while performing safety-sensitive functions is prohibited. No employee shall perform safety sensitive functions within four hours (4) after using alcohol.

No employee shall be on duty or operate a CMV while the driver possesses alcohol, unless the alcohol is manifested and transported as part of a shipment. An employee who possesses alcohol will be subject to disciplinary action and will be removed from performing safety-sensitive functions until the start of the employee's next regularly scheduled duty period but not less than twenty-four (24) hours. The employee will also be referred to the SAP for evaluation to determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and be released to duty by the SAP, with completion of a return-to-duty alcohol test indicating an alcohol concentration of less than 0.02. Follow-up testing may be required.

The concentration of alcohol is expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath testing device (EBT). See CFR Part 40, as amended.

5.0 Testing Compliance Requirements

Employees in covered positions will be subject to urine drug testing and breath alcohol testing.

Any employee or prospective employee who refuses to sign any required release(s) for release of information relative to test results or required follow-up evaluations by the Substance Abuse Professional (SAP), fails to comply with a request for testing, provides false information in connection with a test, or who attempts to falsify test results through tampering, contamination, adulteration or substitution shall be considered as having a positive test.

Refusal includes an inability to provide a urine specimen or breath sample without a valid medical explanation, as well as a verbal declaration, obstructive behavior, or physical absence resulting in the inability to conduct the test. (Note: If the employee or prospective employee is unable to provide the required amount of urine for drug testing, he/she will be instructed to drink not more than twenty-four (24) ounces of fluids and, after a period of up to two (2) hours, again attempt to provide a complete sample using a fresh collection container with the original insufficient specimen discarded.)

Refusal to submit to testing and not being available for post-accident testing unless injury prevents testing will be considered insubordination and a positive test. Disciplinary action will be taken which could include termination.

6.0 Testing for Prohibited Substances

Employees in covered positions will be subject to the following tests: pre-employment; post-accident; random; reasonable suspicion; return-to-duty and follow-up.

Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment and laboratory facilities which have been approved by the U.S. Department of Health and Human Services (DHHS). All testing will be conducted consistent with the procedures put forth in 49 CFR Part 40, as amended.

The Department will protect individual dignity, privacy and confidentiality throughout the testing process.

Drug Testing

Drug testing may occur at any time during **on duty time**. The drugs that will be tested for include marijuana, cocaine, opiates, amphetamines and phencyclidine.

An initial drug screen will be conducted on each specimen.

For those specimens that are positive, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts present are above the minimum thresholds in 49 CFR Part 40, as amended.

The following actions will occur as a result of a confirmed positive drug test:

First occurrence - removal from performing safety- sensitive functions; and subject to long-term disciplinary suspension without pay (ten (10) or more working days), disciplinary demotion, or recommendation to the Director for termination. Unless a recommendation is made to the Director for termination, the employee will be referred to the SAP for evaluation and a determination of what assistance, if any, the employee needs in resolving problems associated with controlled substances use; released to duty by the SAP; and completion of a return-to-duty controlled substances test with a verified negative result for controlled substances use.

Second occurrence - removal from performing safety- sensitive functions; suspension without pay; and recommendation made to the Director for termination.

If the Department determines that an employee will undergo reasonable suspicion testing, the employee shall be removed from performing safety-sensitive functions until the Department is notified of acceptable test results.

Alcohol Testing

Alcohol testing shall be performed only when the employee is **performing** safety sensitive functions, or **immediately prior** to performing or **immediately after** performing safety sensitive functions. (See the six-numbered items under the definition of on-duty time.)

Tests for alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA) approved EBT operated by a trained breath alcohol technician (BAT).

If the initial test indicates an alcohol concentration of **0.02** or greater, a second (2nd) test will be performed to confirm the results of the initial test.

A confirmed alcohol concentration of **0.04** or greater will be considered a positive alcohol test, and is prohibited conduct under 49 CFR 382.

The following actions will occur:

Confirmed alcohol concentration of **0.02 up to 0.04:**

First occurrence - Removal from performing safety-sensitive functions until the start of the employee's next regularly scheduled duty period, but not less than twenty-four (24) hours following administration of the test; and completion of a return-to-duty alcohol test indicating a breath alcohol concentration of less than 0.02.

Second and any additional occurrences - Removal from performing safety-sensitive functions until the start of the employee's next regularly scheduled duty period, but not less than twenty-four (24) hours following administration of the test. The employee will be referred to the SAP for evaluation to determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and be released to duty by the SAP, with completion of a return-to-duty alcohol test indicating an alcohol concentration of less than 0.02.

(Note: The above paragraph will also apply to an employee whose first (1st) confirmed test alcohol concentration test results are 0.04 up to 0.10 and a later test with concentration results of 0.02 up to 0.04.)

Confirmed alcohol concentration of **0.04 up to 0.10** (positive test):

First occurrence- removal from performing safety- sensitive functions; and subject to long-term disciplinary suspension without pay (ten (10) or more working days), disciplinary demotion or a recommendation to the Director for termination. Unless a recommendation is made to the Director for termination, the employee will be referred to the SAP for evaluation to determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and be released to duty by the SAP, with completion of a return-to-duty alcohol test indicating an alcohol concentration of less than 0.02 and subject to follow-up testing as outlined in section 6.5 below.

Second occurrence - removal from performing safety- sensitive functions; suspension without pay; and recommendation to the Director for termination.

Confirmed alcohol concentration of **0.10 or greater** (positive test):

First occurrence - removal from performing safety- sensitive functions; suspension without pay; and recommendation made to the Director for termination.

6.1 Pre-Employment Testing

The successful applicant for a covered position will be required to undergo urine drug testing after an offer of employment has been made. The employment offer must be conditioned on receipt of a negative drug test.

Prior to hire, the prospective employee must provide a written release so that the Department can obtain from previous employers for the last two (2) years the required information as provided in 49 CFR Part 382, section 382.413. This information must be obtained from employers for whom the prospective employee operated a CMV. If this information isn't provided to the DNRC within fourteen (14) calendar days from the date the employment begins, the employee must be removed from performing safety-sensitive functions unless the Department can document contact was made with the previous employer, the results of that contact, and why the information wasn't obtained.

A prospective employee with a confirmed positive drug test will be disqualified from consideration for the position being filled. This will not prevent this individual from being considered for any subsequent vacancy.

Failure to achieve these test results will disqualify the person for consideration for the position.

6.2 Reasonable Suspicion Testing

Employees in covered positions may be subject to a fitness- for-duty evaluation which includes urine and breath testing when there is reason to believe that drug or alcohol use is a potential factor in affecting job performance.

A reasonable suspicion determination will be made by a supervisor who has been trained in reasonable suspicion and who believes that the employee has violated the prohibitions of these regulations based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee.

Reasonable suspicion determinations must be documented within twenty-four (24) hours of observation and by test results received. A description of the behaviors that led to the determination must be signed by the person who made the determination.

6.3 Post-Accident Testing

Employees in covered positions will be required to undergo urine and breath testing if they are involved in an accident with a Department CMV which occurs on a public road AND EITHER - involves a fatality; OR - a moving violation is issued to the (CMV) driver; AND EITHER - involves injury to a person who, as a result of injury, immediately receives medical treatment away from the scene of the accident;

- one (1) or more of the motor vehicles incur disabling damage as a result of the accident requiring the vehicle to be towed away by a tow truck or other vehicle, or if it were driven, it would be damaged more.

(Note: Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs. It does NOT include damage to tires even if a spare is unavailable, head or taillight, turn signal, horn or windshield damage).

Following the accident, the employee will be tested within two (2) hours of the accident. If this can't be done, reasons for nontesting must be documented. Attempts to test will cease after eight (8) hours for alcohol testing and thirty-two (32) hours for drug testing.

Any employee in a covered position involved in an accident must refrain from alcohol use for eight (8) hours following the accident or until he/she undergoes a post-accident alcohol test. Any employee who leaves the scene of the accident without appropriate explanation prior to submission to drug and alcohol testing will be considered to have refused the test. This will be considered a positive test.

6.4 Random Testing

Employees in covered positions will be subject to random, unannounced testing.

The selection for random testing will be made by a scientifically valid method, and each employee shall have an equal chance of being tested each time selections are made.

A random number of those tested for drugs will also be subject to alcohol testing.

Drug testing may occur at anytime during **on-duty time**. Alcohol testing will be performed before, during or after the employee is performing safety-sensitive functions.

In accordance with the regulations, the minimum annual percentage rate for alcohol testing will be completed for twenty-five (25%) of the average number of covered positions. Drug testing will be completed for fifty percent (50%) of the average number of covered positions. If Department is in a pool with other employers, the actual percentage of Department employees may be higher or lower.

6.5 Return-to-Duty and Follow-Up Testing

Employees who previously had a confirmed positive on a drug or alcohol test must have a negative test and be evaluated and released to duty by the SAP before returning to perform safety-sensitive functions for the Department.

Employees will be required to undergo unannounced follow-up alcohol and/or drug testing as directed by the SAP. This will consist of at least six (6) tests in the first twelve (12) months following the employee's return to duty. Follow-up testing will not exceed sixty (60) months from the date of the employee's return to duty.

Additionally, employees with a second (2nd) occurrence of a confirmed alcohol concentration test of 0.02 or greater will be required to complete a return-to-duty test and also be evaluated by the SAP before returning to work as indicated in section 6.0 above.

6.6 Employee Requested Drug Testing

An employee who questions the results of a confirmed positive drug test may request an additional test be conducted. This test must be conducted at a different testing DHHS certified laboratory. The test must be conducted on the split sample that was provided at the same time as the original sample. The method of collecting, storing and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended.

The employee's request for a re-test must be made to the MRO within seventy-two (72) hours of notice of the initial test result. Requests after the seventy-two (72) hours will only be accepted if the delay was due to documentable facts that were beyond the control of the employee. All costs for a retest on the split sample will be paid by the employee unless the second (2nd) test invalidates the original test.

7.0 Employment Assessment

Any employee who has a confirmed positive for the presence of illegal drugs or alcohol above the minimum thresholds set forth in 49 CFR Part 40, as amended will be evaluated by the SAP designated by the Department. The employee must sign a release so that the Department can obtain information on the rehabilitation program duration, completion and follow-up requirements.

The SAP will evaluate the employee to determine what assistance, if any, the employee needs in resolving problems associated with the prohibited use or abuse of drugs or alcohol, recommend a rehabilitation program and follow-up schedule and determine if the rehabilitation program has been successfully completed. The SAP will also determine if and when the employee can be released to return to duty.

If an employee is released to return-to-duty, he/she must properly follow the rehabilitation program prescribed by the SAP and have a verified confirmed negative return-to-duty test result as indicated in section 6.0 above. Failure to follow the program will result in a recommendation to the Director for termination of employment.

8.0 Proper Application of Policy

The Department is dedicated to assuring fair and equitable application of this policy. Therefore, supervisors/managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor/manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to a subordinate, shall be subject to disciplinary action up to and including termination.

9.0 System Contact

Any questions regarding this policy or any other aspects of the drug-free and alcohol-free Department program should contact the Department Personnel Director or his designee at (406 444-2074).

Attachment 1

Definitions

Accident - an occurrence involving a Department commercial motor vehicle (CMV) operating on a public road AND EITHER - involves a fatality; OR - moving violation is issued to the CMV driver; AND EITHER - involves injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; OR - one (1) or more motor vehicles incurs disabling damage as a result of the accident requiring the vehicle to be towed away by a tow truck or other vehicle, or if it were driven, it would be damaged more.

(Note: Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs. It does not include damage to tires even if a spare is unavailable, head or taillight, turn signal, horn or windshield damage.)

Alcohol - the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

Alcohol concentration (AC) - means the concentration of alcohol in a person's blood or breath. When expressed as a percentage it means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

Alcohol use - the consumption of any beverage, mixture, or preparation, including any medication containing alcohol.

Breath alcohol technician (BAT) - an individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device (EBT).

Commercial motor vehicle (CMV) - a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

- has a gross combination weight of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
- has a gross vehicle weight rating of 26,001 or more pounds; or
- is designed to transport 16 or more passengers, including the driver; or
- is of any size and is used in the transportation of hazardous materials requiring placards.

Confirmation test - for alcohol testing, this means a second test, following a screening test with a result of 0.02 grams or greater of alcohol per 210 liters of breath, that provides quantitative data of alcohol concentration.

For controlled substances testing, this means a second analytical procedure to identify the presence of a specific drug or metabolite determined by Gas Chromatography/Mass Spectrometry (GC/MS) which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy.

Controlled substance - includes, marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine.

Covered positions - positions that are subject to Commercial Drivers License (CDL) requirements and perform safety-sensitive functions. (See **ATTACHMENT 2**).

Driver - any person who operates a CMV. For the purposes of pre-employment testing, the term driver includes a person applying to drive a commercial motor vehicle.

Evidential breath testing device (EBT) - a device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's September 1993 or later "Conforming Products List of Evidential Breath Measurement Devices" (CPL).

Medical Review Officer (MRO) - a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

Negative test - for drugs, a test with the amounts present that are at or below the minimum thresholds in 49 CFR Part 40, as amended. For alcohol, a concentration below 0.04.

On-duty time - All time from the time a driver begins to work or is required to be in readiness to work until the time he is relieved from work and all responsibility for performing work.

On-duty time shall include:

1. All time at a carrier or shipper plant, terminal, facility or other property, or on any public property, waiting to be dispatched, unless has been relieved from duty by the motor carrier.
2. All time inspecting to make sure that the parts, accessories and emergency equipment are in good working order and ready for use or otherwise inspecting, servicing, or conditioning any commercial vehicle.
3. All time spent at the driving controls of a commercial motor vehicle in operation.
4. All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth.
5. All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipment loaded or unloaded.
6. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle

Performing a safety sensitive function - means a driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive function. See items 1-6 above in the definition of on-duty time.

Positive test - for a drug test, an amount above the minimum thresholds in 49 CFR Part 40, as amended. For an alcohol test, a breath alcohol concentration at 0.04 or greater.

Refuse to submit - (to an alcohol or controlled substances test) means that a driver:

1. fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing in accordance with the provisions of this part;
2. fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing in accordance with the provisions of this part, or
3. engages in conduct that clearly obstructs the testing process.

Reasonable suspicion - belief that the employee has violated the alcohol or controlled substances prohibitions, based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee.

Safety sensitive functions - see items 1-6 in the definition of "**on-duty time**" above.

Screening test (also known as initial test) - in alcohol testing, it means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system. In controlled substance testing, it means an immunoassay screen to eliminate "negative" urine specimens from further consideration.

Substance abuse professional (SAP) - a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

Attachment 2

Classes That May Require A Commercial Driver's License

Classification Title

Forester 040013, 040014, 040015

Forestry Tech 452009, 452010
Forestry Worker 441004

Mechanic/Machinist 996301

Mechanic/Machinist Foreman 996303

Equipment Operator 919006, 919007

Land Use Specialist 013019, 013020, 013021

Warehouse Worker 922004, 92200

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